IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1474 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BARODA MUNICIPAL CORPORATION - Petitioner(s)
Versus
BHAILALBHAI MOHANBHAI SOLANKI - Respondent(s)

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Appearance :
MR PRANAV G DESAI for Petitioner(s) : 1,
Ms. Utpalla Bora for MR MUKUL SINHA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 10/10/2007

ORAL JUDGMENT

The petitioner Baroda Municipal Corporation [hereinafter referred to as 'the Corporation'], has preferred the present petition under Articles 226 and

227 of the Constitution against the judgment and award dated 13th October 1998 passed by the Labour Court, Vadodara in Reference (L.C.V.) No. 778 of 1988. Respondent is the delinquent workman. By impugned award the Corporation is directed to reinstate the workman in service with continuity of service and to pay him 40% of the backwages. A punishment of withholding of one increment without future effect has been imposed upon the workman for the charge proved against the workman.

2. The workman was engaged as a labourer by the Corporation in its Parks and Garden Department from 1st January 1979. Prior to his regular appointment he was working as a casual labourer for about 8 or 9 years. In the month of June 1985 the workman had applied for 15 days' earned leave. As there was no leave available, the earned leave asked for by the workman was refused. Nevertheless, the workman proceeded on leave and remained absent from duty without leave right from June 1985. He was given notices to report for duty which too were not accepted by the workman. The workman continued to

remain absent from duty till disciplinary proceeding was initiated against him.

3. On 5th February, 1986 a chargesheet came to be issued against the workman for remaining absent from duty amounting to lack of devotion to duty and for not accepting the official notices written to him. The chargesheet and the notices issued to the workman were returned unserved with a postal remark that the addressee, the workman, had left India and had gone abroad. Some of the notices were accepted by wife of the workman. Thus the workman refrained from participating in the disciplinary proceeding, the imputation of charge made against the workman was held to be proved. On 13th June 1986, the workman was sent the report of the enquiry officer and the papers of the disciplinary proceeding. On 29th July 1986, once again the workman was given notice to report for duty. The said notice was, however, not accepted. By order dated 18th August, 1986, for the aforesaid misconducts proved against the workman, he was removed from his service. Feeling aggrieved, the workman raised industrial dispute which came to be referred to the Labour Court, Baroda and was registered as above.

4. Before the Labour Court, the workman filed a statement of claim on 14th October 1998. According to the workman he had never remained absent from service and he was regularly attending the work. However the Director, one Mohanbhai M. Patel, out of personal grudge against workman did not allow the workman to perform the duty. The claim was contested by the Corporation. The Corporation denied the allegations made by the workman and placed on record the papers of the disciplinary proceeding. In the oral evidence before the Labour Court the workman deposed that he had not left India or gone abroad and that he did not possess a passport. He also said that he reported for duty after he recovered from illness.

5. The learned Labour Judge held that the workman had remained absent from duty on account of illness and that his service was terminated for such lapse by an oral order without conducting a formal disciplinary proceeding. That the workman was not given opportunity of defence. The order of removal from service for absence from duty was too harsh and

not commensurate to the gravity of misconduct proved. The learned Labour Judge, therefore, set aside the order of punishment. He was, however, of the opinion that the workman was negligent in not reporting his absence from duty and in not producing certificate of fitness. For the said act of negligence, the workman has been visited with punishment of withholding of one increment without future effect.

6. The judgment of the learned Labour Judge is ex facie erroneous and illegal. Though the papers of the disciplinary proceeding were produced before the Labour Court, the Court has held that no formal disciplinary proceeding was held against the workman, that workman was not given opportunity of hearing, and that the workman was removed from service by an oral order. The workman came with a specific case that he did report for duty every day but he was not allowed to resume duty, and that he had not remained absent from duty. However in the oral evidence he said that he had reported for duty after he became fit for service. It should be noted that it was never the case of the workman that he was sick or was not well, that he had to undergo some medical

treatment which prevented him from reporting for duty, and that he had reported for duty after recovering from such illness. It appears that the workman tried to improve his case in oral evidence by adding one sentence about his reporting for duty after recovery from illness. Though he did not take such plea in his statement of claim, nor did he produce any medical evidence, the learned Labour Judge seems to have accepted the said statement and has held that the workman could not report for duty on account of his sickness. The said finding is ex facie perverse and contrary to the pleadings and evidence on record. Nevertheless, the said statement made by the workman in his oral evidence proves that the workman had remained away from service, and that he did remain absent from service contrary to his pleadings.

7. I have perused the papers of the disciplinary proceedings, certified copies of which are produced by Ms. Bora. It appears that time and again the workman was given notice for reporting for duty. As he failed to reply to the said notices, disciplinary proceeding was initiated against him.

Pending the disciplinary proceeding also time and again notices were given to the delinquent. Some of the services were accepted by his wife while some were returned unserved with the postal remark that 'the addressee had gone abroad'. The workman was given copy of the Enquiry Officer's report and one further opportunity to report for duty. It is evident that the workman had been given adequate opportunity which he did not avail of. The workman had remained absent from duty without leave for a long time, he did not care to report his absence nor did he answer the notice given to him. The order of punishment of removal from service made against the workman does not warrant interference.

8. For the aforesaid reasons, the petition is allowed. The impugned judgment and award dated 13th October 1998 passed by the Labour Court, Vadodara in Reference (L.C.V.) No. 778/1988, is quashed and set aside. The claim made by the workman is rejected. Rule is made absolute with no order as to cost.

[Ms. R.M. Doshit, J.]

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